

aspects of airport-related business in the public and private markets.

“(4) This testimony and documentation provides a strong basis that there is a compelling need for the continuation of the airport disadvantaged business enterprise program and the airport concessions disadvantaged business enterprise program to address race and gender discrimination in airport-related business.”

#### § 47114. Apportionments

(a) DEFINITION.—In this section, “amount subject to apportionment” means the amount newly made available under section 48103 of this title for a fiscal year.

(b) APPORTIONMENT DATE.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) AMOUNTS APPORTIONED TO SPONSORS.—

(1) PRIMARY AIRPORTS.—

(A) APPORTIONMENT.—The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

- (i) \$7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;
- (ii) \$5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;
- (iii) \$2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year;
- (iv) \$.65 for each of the next 500,000 passenger boardings at the airport during the prior calendar year; and
- (v) \$.50 for each additional passenger boarding at the airport during the prior calendar year.

(B) MINIMUM AND MAXIMUM APPORTIONMENTS.—Not less than \$650,000 nor more than \$22,000,000 may be apportioned under subparagraph (A) of this paragraph to an airport sponsor for a primary airport for each fiscal year.

(C) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more—

- (i) the amount to be apportioned to a sponsor under subparagraph (A) shall be increased by doubling the amount that would otherwise be apportioned;
- (ii) the minimum apportionment to a sponsor under subparagraph (B) shall be \$1,000,000 rather than \$650,000; and
- (iii) the maximum apportionment to a sponsor under subparagraph (B) shall be \$26,000,000 rather than \$22,000,000.

(D) NEW AIRPORTS.—Notwithstanding subparagraph (A), the Secretary shall apportion on the first day of the first fiscal year following the official opening of a new airport with scheduled passenger air transportation an amount equal to the minimum amount set forth in subparagraph (B) or (C), as appropriate, to the sponsor of such airport.

(E) USE OF PREVIOUS FISCAL YEAR'S APPORTIONMENT.—Notwithstanding subparagraph (A), the Secretary may apportion to an air-

port sponsor in a fiscal year an amount equal to the amount apportioned to that sponsor in the previous fiscal year if the Secretary finds that—

- (i) passenger boardings at the airport fell below 10,000 in the calendar year used to calculate the apportionment;
- (ii) the airport had at least 10,000 passenger boardings in the calendar year prior to the calendar year used to calculate apportionments to airport sponsors in a fiscal year; and
- (iii) the cause of the shortfall in passenger boardings was a temporary but significant interruption in service by an air carrier to that airport due to an employment action, natural disaster, or other event unrelated to the demand for air transportation at the affected airport.

(F) SPECIAL RULE FOR FISCAL YEAR 2017.—Notwithstanding subparagraph (A), the Secretary shall apportion to a sponsor of an airport under that subparagraph for fiscal year 2017 an amount based on the number of passenger boardings at the airport during calendar year 2012 if the airport—

- (i) had 10,000 or more passenger boardings during calendar year 2012;
- (ii) had fewer than 10,000 passenger boardings during the calendar year used to calculate the apportionment for fiscal year 2017 under subparagraph (A); and
- (iii) had scheduled air service at any point during the calendar year used to calculate the apportionment for fiscal year 2017 under subparagraph (A).

(2) CARGO AIRPORTS.—

(A) APPORTIONMENT.—Subject to subparagraph (D), the Secretary shall apportion an amount equal to 3.5 percent of the amount subject to apportionment each fiscal year to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds.

(B) SUBALLOCATION FORMULA.—Any funds apportioned under subparagraph (A) to sponsors of airports described in subparagraph (A) shall be allocated among those airports in the proportion that the total annual landed weight of aircraft described in subparagraph (A) landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports.

(C) LIMITATION.—In any fiscal year in which the total amount made available under section 48103 is less than \$3,200,000,000, not more than 8 percent of the amount apportioned under subparagraph (A) may be apportioned for any one airport.

(D) DISTRIBUTION TO OTHER AIRPORTS.—Before apportioning amounts to the sponsors of airports under subparagraph (A) for a fiscal year, the Secretary may set-aside a portion of such amounts for distribution to the sponsors of other airports, selected by the Secretary, that the Secretary finds will be served primarily by aircraft providing air transportation of only cargo.

(E) DETERMINATION OF LANDED WEIGHT.—Landed weight under this paragraph is the

landed weight of aircraft landing at each airport described in subparagraph (A) during the prior calendar year.

(d) AMOUNTS APPORTIONED FOR GENERAL AVIATION AIRPORTS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) AREA.—The term “area” includes land and water.

(B) POPULATION.—The term “population” means the population stated in the latest decennial census of the United States.

(2) APPORTIONMENT.—Except as provided in paragraph (3), the Secretary shall apportion to the States 18.5 percent of the amount subject to apportionment for each fiscal year as follows:

(A) 0.66 percent of the apportioned amount to Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(B) Except as provided in paragraph (4), 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in subparagraph (A) in the proportion that the population of each of those States bears to the total population of all of those States.

(C) Except as provided in paragraph (4), 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in subparagraph (A) in the proportion that the area of each of those States bears to the total area of all of those States.

(3) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, rather than making an apportionment under paragraph (2), the Secretary shall apportion 20 percent of the amount subject to apportionment for each fiscal year as follows:

(A) To each airport, excluding primary airports but including reliever and nonprimary commercial service airports, in States the lesser of—

(i) \$150,000; or

(ii)  $\frac{1}{2}$  of the most recently published estimate of the 5-year costs for airport improvement for the airport, as listed in the national plan of integrated airport systems developed by the Federal Aviation Administration under section 47103.

(B) Any remaining amount to States as follows:

(i) 0.62 percent of the remaining amount to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

(ii) Except as provided in paragraph (4), 49.69 percent of the remaining amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in clause (i) in the proportion that the population of each of those States bears to the total population of all of those States.

(iii) Except as provided in paragraph (4), 49.69 percent of the remaining amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in clause (i) in the proportion that the area of each of those States bears to the total area of all of those States.

(4) AIRPORTS IN ALASKA, PUERTO RICO, AND HAWAII.—An amount apportioned under paragraph (2) or (3) to Alaska, Puerto Rico, or Hawaii for airports in such State may be made available by the Secretary for any public airport in those respective jurisdictions.

(5) USE OF STATE HIGHWAY SPECIFICATIONS.—

(A) IN GENERAL.—The Secretary may permit the use of State highway specifications for airfield pavement construction using funds made available under this subsection at nonprimary airports with runways of 5,000 feet or shorter serving aircraft that do not exceed 60,000 pounds gross weight if the Secretary determines that—

(i) safety will not be negatively affected; and

(ii) the life of the pavement will not be shorter than it would be if constructed using Administration standards.

(B) LIMITATION.—An airport may not seek funds under this subchapter for runway rehabilitation or reconstruction of any such airfield pavement constructed using State highway specifications for a period of 10 years after construction is completed unless the Secretary determines that the rehabilitation or reconstruction is required for safety reasons.

(6) INTEGRATED AIRPORT SYSTEM PLANNING.—Notwithstanding any other provision of this subsection, funds made available under this subsection may be used for integrated airport system planning that encompasses one or more primary airports.

(7) ELIGIBILITY TO RECEIVE PRIMARY AIRPORT MINIMUM APPORTIONMENT AMOUNT.—Notwithstanding any other provision of this subsection, the Secretary may apportion to an airport sponsor in a fiscal year an amount equal to the minimum apportionment available under subsection (c)(1)(B) if the Secretary finds that the airport—

(A) received scheduled or unscheduled air service from a large certificated air carrier (as defined in part 241 of title 14, Code of Federal Regulations, or such other regulations as may be issued by the Secretary under the authority of section 41709) in the calendar year used to calculate the apportionment; and

(B) had more than 10,000 passenger boardings in the calendar year used to calculate the apportionment.

(e) SUPPLEMENTAL APPORTIONMENT FOR ALASKA.—

(1) IN GENERAL.—Notwithstanding subsections (c) and (d) of this section, the Secretary may apportion amounts for airports in Alaska in the way in which amounts were apportioned in the fiscal year ending September

30, 1980, under section 15(a) of the Act. However, in apportioning amounts for a fiscal year under this subsection, the Secretary shall apportion—

(A) for each primary airport at least as much as would be apportioned for the airport under subsection (c)(1) of this section; and

(B) a total amount at least equal to the minimum amount required to be apportioned to airports in Alaska in the fiscal year ending September 30, 1980, under section 15(a)(3)(A) of the Act.

(2) **AUTHORITY FOR DISCRETIONARY GRANTS.**—This subsection does not prohibit the Secretary from making project grants for airports in Alaska from the discretionary fund under section 47115 of this title.

(3) **AIRPORTS ELIGIBLE FOR FUNDS.**—An amount apportioned under this subsection may be used for any public airport in Alaska.

(4) **SPECIAL RULE.**—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, the amount that may be apportioned for airports in Alaska under paragraph (1) shall be increased by doubling the amount that would otherwise be apportioned.

(f) **REDUCING APPORTIONMENTS.**—

(1) **IN GENERAL.**—Subject to paragraph (3), an amount that would be apportioned under this section (except subsection (c)(2)) in a fiscal year to the sponsor of an airport having at least .25 percent of the total number of boardings each year in the United States and for which a charge is imposed in the fiscal year under section 40117 of this title shall be reduced by an amount equal to—

(A) in the case of a charge of \$3.00 or less—

(i) except as provided in clause (ii), 50 percent of the projected revenues from the charge in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section; or

(ii) with respect to an airport in Hawaii, 50 percent of the projected revenues from the charge in the fiscal year but not by more than 50 percent of the excess of—

(I) the amount that otherwise would be apportioned under this section; over

(II) the amount equal to the amount specified in subclause (I) multiplied by the percentage of the total passenger boardings at the applicable airport that are comprised of interisland passengers; and

(B) in the case of a charge of more than \$3.00—

(i) except as provided in clause (ii), 75 percent of the projected revenues from the charge in the fiscal year but not by more than 75 percent of the amount that otherwise would be apportioned under this section; or

(ii) with respect to an airport in Hawaii, 75 percent of the projected revenues from the charge in the fiscal year but not by more than 75 percent of the excess of—

(I) the amount that otherwise would be apportioned under this section; over

(II) the amount equal to the amount specified in subclause (I) multiplied by the percentage of the total passenger boardings at the applicable airport that are comprised of interisland passengers.

(2) **EFFECTIVE DATE OF REDUCTION.**—A reduction in an apportionment required by paragraph (1) shall not take effect until the first fiscal year following the year in which the collection of the charge imposed under section 40117 is begun.

(3) **SPECIAL RULE FOR TRANSITIONING AIRPORTS.**—

(A) **IN GENERAL.**—Beginning with the fiscal year following the first calendar year in which the sponsor of an airport has more than .25 percent of the total number of boardings in the United States, the sum of the amount that would be apportioned under this section after application of paragraph (1) in a fiscal year to such sponsor and the projected revenues to be derived from the charge in such fiscal year shall not be less than the sum of the apportionment to such airport for the preceding fiscal year and the revenues derived from such charge in the preceding fiscal year.

(B) **EFFECTIVE PERIOD.**—Subparagraph (A) shall be in effect for fiscal year 2004.

(g) **SUPPLEMENTAL APPORTIONMENT FOR PUERTO RICO AND UNITED STATES TERRITORIES.**—The Secretary shall apportion amounts for airports in Puerto Rico and all other United States territories in accordance with this section. This subsection does not prohibit the Secretary from making project grants for airports in Puerto Rico or other United States territories from the discretionary fund under section 47115.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1268; Pub. L. 103–429, §6(66), Oct. 31, 1994, 108 Stat. 4386; Pub. L. 104–264, title I, §121, Oct. 9, 1996, 110 Stat. 3217; Pub. L. 106–181, title I, §§104(a)–(d), 105(c), Apr. 5, 2000, 114 Stat. 67–71; Pub. L. 108–176, title I, §§146, 147, Dec. 12, 2003, 117 Stat. 2504; Pub. L. 109–115, div. A, title I, §109, Nov. 30, 2005, 119 Stat. 2402; Pub. L. 112–95, title I, §§111(c)(2)(A)(iii), 141–143, Feb. 14, 2012, 126 Stat. 18, 28, 29; Pub. L. 114–190, title II, §2301, July 15, 2016, 130 Stat. 638.)

#### HISTORICAL AND REVISION NOTES PUB. L. 103–272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
47114(a), (b)	49 App.:2206(a) (words before cl. (1)).	Sept. 3, 1982, Pub. L. 97–248, §507(a)(1), (3), (b)(2), (4)–(5)(C), (E), (6), 96 Stat. 679; Jan. 6, 1983, Pub. L. 97–424, §426(a), (d), 96 Stat. 2167, 2168; restated Dec. 30, 1987, Pub. L. 100–223, §106(a), 101 Stat. 1494, 1496.
47114(c) (1)(A).	49 App.:2206(a)(1). 49 App.:2206(e)(1).	Sept. 3, 1982, Pub. L. 97–248, §507(e), (f), 96 Stat. 679; Jan. 6, 1983, Pub. L. 97–424, §426(a), (d), 96 Stat. 2167, 2168; restated Dec. 30, 1987, Pub. L. 100–223, §106(a), 101 Stat. 1497; Nov. 5, 1990, Pub. L. 101–508, §9112(b), 104 Stat. 1388–362.

HISTORICAL AND REVISION NOTES—CONTINUED  
PUB. L. 103-272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
47114(c) (1)(B).	49 App.:2206(b)(1).	Sept. 3, 1982, Pub. L. 97-248, § 507(a)(2), (b)(1), (3), (5)(F), 96 Stat. 679; Jan. 6, 1983, Pub. L. 97-424, § 426(a), (d), 96 Stat. 2167, 2168; restated Dec. 30, 1987, Pub. L. 100-223, § 106(a), 101 Stat. 1494, 1496; Oct. 31, 1992, Pub. L. 102-581, § 106, 106 Stat. 4878.
47114(c)(2) ..	49 App.:2206(a)(2), (b)(4), (e)(2).	
47114(c)(3) ..	49 App.:2206(b)(2), (3).	
47114(d)(1) ..	49 App.:2206(f).	
47114(d)(2) ..	49 App.:2206(a)(3).	
47114(d)(3) ..	49 App.:2206(b)(6).	
47114(e) .....	49 App.:2206(b) (5)(A)-(C), (E), (F).	
47114(f) .....	49 App.:2206(b)(7).	Sept. 3, 1982, Pub. L. 97-248, 96 Stat. 324, § 507(b)(7); added Nov. 5, 1990, Pub. L. 101-508, § 9111, 104 Stat. 1388-362.

In subsection (a), the word “newly” is substituted for “and not previously apportioned” for clarity. The words “made available” are substituted for “authorized to be obligated” for clarity and consistency.

In subsection (c)(1)(A), the words “during the prior calendar year” are substituted for 49 App.:2206(b) for clarity.

In subsection (c)(2)(A), the word “cargo” is substituted for “property (including mail)” for consistency in the revised title.

In subsection (c)(3), the words “The total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for a fiscal year” are substituted for 49 App.:2206(b)(2)(A) and (3)(A) for clarity and to eliminate unnecessary words. The words “If this paragraph requires reduction of an amount that otherwise would be apportioned under this subsection” are substituted for “In any case in which apportionments in a fiscal year would be reduced by subparagraph (A)” for clarity.

In subsection (d)(2)(A), the words “the Commonwealth of” are omitted as surplus.

In subsection (d)(2)(B) and (C), the words “except as provided in paragraph (3) of this subsection” are added, and the words “49.5 percent of the apportioned amount” are substituted for “1/2 of the remaining 99 percent”, for clarity.

In subsection (d)(3), before clause (A), the words “Notwithstanding subsection (a)(3)(B) of this section” are omitted as surplus.

In subsection (e)(1), before clause (A), the words “Instead of apportioning amounts for airports in Alaska under subsections (c) and (d) of this section” are substituted for “Notwithstanding any other provision of subsection (a) of this section” for clarity.

In subsection (e)(2), the words “be construed as” are omitted as surplus.

In subsection (f), the words “which, but for this paragraph, would be” the first time they appear are omitted as surplus. The words “but not by more than” are substituted for “The maximum reduction in an apportionment to a sponsor of an airport as a result of this paragraph in a fiscal year shall be” to eliminate unnecessary words.

PUB. L. 103-429

Revision notes for 49:47114(c)(3)(A) are included to reflect changes made for clarity and to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 1269).

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
47114(c) (1)(B).	49 App.:2206(b)(1).	Sept. 3, 1982, Pub. L. 97-248, § 507(b)(1), as amended May 26, 1994, Pub. L. 103-260, § 103, 108 Stat. 698.
47114(c) (3)(B).	49 App.:2206(b)(3).	Sept. 3, 1982, Pub. L. 97-248, § 507(b)(3), as amended May 26, 1994, Pub. L. 103-260, § 102, 108 Stat. 698.

In subsection (c)(3)(A) and (B), the words “If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection” are substituted for “In any case in which apportionments in a fiscal year would be reduced by subparagraph (A)” for clarity.

In subsection (c)(3)(A), the words “Except as provided in subparagraph (B) of this paragraph” are added for clarity. The words “the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 49.5 percent of the amount subject to apportionment for a fiscal year” are substituted for 49 App.:2206(b)(2)(A), as in effect on July 4, 1994, for clarity and to eliminate unnecessary words.

In subsection (c)(3)(B), the words “the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for that fiscal year” are substituted for 49 App.:2206(b)(3)(A), as in effect on July 4, 1994, for clarity and to eliminate unnecessary words.

REFERENCES IN TEXT

Section 15(a) of the Airport and Airway Development Act of 1970, referred to in subsec. (e)(1), is section 15(a) of Pub. L. 91-258, which was classified to section 1715(a) of former Title 49, Transportation, prior to repeal by Pub. L. 97-248, title V, § 523(a), Sept. 3, 1982, 96 Stat. 695.

AMENDMENTS

2016—Subsec. (c)(1)(F). Pub. L. 114-190 amended subpar. (F) generally. Prior to amendment, text read as follows: “Notwithstanding subparagraph (A), for an airport that had more than 10,000 passenger boardings and scheduled passenger aircraft service in calendar year 2007, but in either calendar year 2009 or 2010, or in both years, the number of passenger boardings decreased to a level below 10,000 boardings per year at such airport, the Secretary may apportion in each of fiscal years 2012 and 2013 to the sponsor of such airport an amount equal to the amount apportioned to that sponsor in fiscal year 2009.”

2012—Subsec. (c)(1)(F), (G). Pub. L. 112-95, § 141(b), added subpar. (F) and struck out former subpars. (F) and (G) which related, respectively, to special rules for fiscal years 2004 and 2005 and to special rule for fiscal year 2006.

Subsec. (d)(7). Pub. L. 112-95, § 141(a), added par. (7).

Subsec. (f). Pub. L. 112-95, § 111(c)(2)(A)(iii), substituted “charge” for “fee” wherever appearing.

Subsec. (f)(1)(A), (B). Pub. L. 112-95, § 143, added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) in the case of a charge of \$3.00 or less, 50 percent of the projected revenues from the charge in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section; and

“(B) in the case of a charge of more than \$3.00, 75 percent of the projected revenues from the charge in the fiscal year but not by more than 75 percent of the amount that otherwise would be apportioned under this section.”

Subsec. (g). Pub. L. 112-95, § 142, added subsec. (g).

2005—Subsec. (c)(1)(G). Pub. L. 109-115 added subpar. (G).

2003—Subsec. (c)(1)(F). Pub. L. 108-176, § 146(a), added subpar. (F).

Subsec. (c)(2). Pub. L. 108-176, § 147(1), struck out “ONLY” after “CARGO” in heading.

Subsec. (c)(2)(A). Pub. L. 108-176, § 147(2), substituted “3.5 percent” for “3 percent”.

Subsec. (f)(3). Pub. L. 108-176, § 146(b)(1), substituted “AIRPORTS” for “AIRORTS” in heading.

Subsec. (f)(3)(B). Pub. L. 108-176, § 146(b)(2), substituted “fiscal year 2004” for “fiscal years 2000 through 2003”.

2000—Subsec. (c)(1). Pub. L. 106-181, § 104(a)(2)(A), (C), inserted headings for par. (1) and subpar. (A) and realigned margins.

Subsec. (c)(1)(B). Pub. L. 106-181, § 104(a)(1)(A), (2)(B), (C), inserted heading, substituted “\$650,000” for “\$500,000”, and realigned margins.

Subsec. (c)(1)(C) to (E). Pub. L. 106-181, § 104(a)(1)(B), added subpars. (C) to (E).

Subsec. (c)(2)(A). Pub. L. 106-181, § 104(b)(1), substituted “3 percent” for “2.5 percent”.

Subsec. (c)(2)(C). Pub. L. 106-181, § 104(b)(2), substituted “In any fiscal year in which the total amount made available under section 48103 is less than \$3,200,000,000, not more than” for “Not more than”.

Subsec. (d). Pub. L. 106-181, § 104(c), amended heading and text of subsec. (d) generally, revising and restating as pars. (1) to (6) provisions formerly contained in pars. (1) to (3).

Subsec. (e). Pub. L. 106-181, § 104(d)(1), substituted “Supplemental” for “Alternative” in heading.

Subsec. (e)(1). Pub. L. 106-181, § 104(d)(2), (5), inserted heading, realigned margins, and in introductory provisions substituted “Notwithstanding” for “Instead of apportioning amounts for airports in Alaska under” and “airports in Alaska” for “those airports”.

Subsec. (e)(2). Pub. L. 106-181, § 104(d)(3), (5), inserted heading and realigned margins.

Subsec. (e)(3), (4). Pub. L. 106-181, § 104(d)(4), added pars. (3) and (4) and struck out former par. (3) which read as follows: “Airports referred to in this subsection include those public airports that received scheduled service as of September 3, 1982, but were not apportioned amounts in the fiscal year ending September 30, 1980, under section 15(a) of the Act because the airports were not under the control of a State or local public agency.”

Subsec. (f). Pub. L. 106-181, § 105(c), designated existing provisions as par. (1), inserted heading, realigned margins, substituted “Subject to paragraph (3), an amount” for “An amount” and “an amount equal to—” and subpars. (A) and (B) for “an amount equal to 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section.”, and added pars. (2) and (3).

1996—Subsec. (c)(1)(A)(iv). Pub. L. 104-264, § 121(a)(1)(B), substituted “of the next 500,000 passenger boardings” for “additional passenger boarding”.

Subsec. (c)(1)(A)(v). Pub. L. 104-264, § 121(a)(1)(A), (C), (D), added cl. (v).

Subsec. (c)(2). Pub. L. 104-264, § 121(a)(2)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2)(A) The Secretary shall apportion to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds for each fiscal year an amount equal to 3.5 percent of the amount subject to apportionment each year, allocated among those airports in the proportion that the total annual landed weight of those aircraft landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports. However, not more than 8 percent of the amount apportioned under this paragraph may be apportioned for any one airport.

“(B) Landed weight under subparagraph (A) of this paragraph is the landed weight of aircraft landing at each of those airports and all those airports during the prior calendar year.”

Subsec. (c)(3). Pub. L. 104-264, § 121(a)(3), struck out par. (3) which read as follows:

“(3)(A) Except as provided in subparagraph (B) of this paragraph, the total of all amounts apportioned under

paragraphs (1) and (2) of this subsection may not be more than 49.5 percent of the amount subject to apportionment for a fiscal year. If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 49.5 percent limit is achieved.

“(B) If a law limits the amount subject to apportionment to less than \$1,900,000,000 for a fiscal year, the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for that fiscal year. If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 44 percent limit is achieved.”

Subsec. (d)(2). Pub. L. 104-264, § 121(b)(1), substituted “18.5” for “12” in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 104-264, § 121(b)(2), substituted “0.66” for “one”.

Subsec. (d)(2)(B), (C). Pub. L. 104-264, § 121(b)(3), (4), substituted “49.67” for “49.5” and “excluding primary airports but including reliever and nonprimary commercial service airports,” for “except primary airports and airports described in section 47117(e)(1)(C) of this title.”

1994—Subsec. (c)(1)(B). Pub. L. 103-429, § 6(66)(A), substituted “\$500,000” for “\$400,000”.

Subsec. (c)(3). Pub. L. 103-429, § 6(66)(B), designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B) of this paragraph, the” for “The”, “49.5” for “44” in two places, and “If this subparagraph” for “If this paragraph”, and added subpar. (B).

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

Pub. L. 104-264, title I, § 125, Oct. 9, 1996, 110 Stat. 3220, which provided that the amendments made by subtitle B (§§ 121-125) of title I of Pub. L. 104-264, amending this section and sections 47115, 47117, and 47118 of this title, were to cease to be effective on Sept. 30, 1998, and that on and after such date, sections 47114, 47115, 47117, and 47118 of this title were to read as if such amendments had not been enacted, was repealed by Pub. L. 105-277, div. C, title I, § 110(a), Oct. 21, 1998, 112 Stat. 2681-587, effective Sept. 29, 1998.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 6(66)(B) of Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

## APPORTIONED FUNDS

Pub. L. 107-71, title I, §119(b), Nov. 19, 2001, 115 Stat. 629, provided that: “For the purpose of carrying out section 47114 of title 49, United States Code, for fiscal year 2003, the Secretary shall use, in lieu of passenger boardings at an airport during the prior calendar year, the greater of—

“(1) the number of passenger boardings at that airport during 2000; or

“(2) the number of passenger boardings at that airport during 2001.”

[For definition of “airport” used in section 119(b) of Pub. L. 107-71, set out above, see section 133 of Pub. L. 107-71, set out as a note under section 40102 of this title.]

**§ 47115. Discretionary fund**

(a) **EXISTENCE AND AMOUNTS IN FUND.**—The Secretary of Transportation has a discretionary fund. The fund consists of—

(1) amounts subject to apportionment for a fiscal year that are not apportioned under section 47114(c)–(e) of this title; and

(2) 12.5 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) **AVAILABILITY OF AMOUNTS.**—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the Secretary considers most appropriate to carry out this subchapter.

(c) **MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.**—At least 75 percent of the amount in the fund and distributed by the Secretary in a fiscal year shall be used for making grants—

(1) to preserve and enhance capacity, safety, and security at primary and reliever airports; and

(2) to carry out airport noise compatibility planning and programs at primary and reliever airports.

(d) **CONSIDERATIONS.**—

(1) **FOR CAPACITY ENHANCEMENT PROJECTS.**—In selecting a project for a grant to preserve and improve capacity funded in whole or in part from the fund, the Secretary shall consider—

(A) the effect that the project will have on overall national transportation system capacity;

(B) the benefit and cost of the project, including, in the case of a project at a reliever airport, the number of operations projected to be diverted from a primary airport to the reliever airport as a result of the project, as well as the cost savings projected to be realized by users of the local airport system;

(C) the financial commitment from non-United States Government sources to preserve or improve airport capacity;

(D) the airport improvement priorities of the States to the extent such priorities are not in conflict with subparagraphs (A) and (B);

(E) the projected growth in the number of passengers or aircraft that will be using the airport at which the project will be carried out; and

(F) the ability of the project to foster United States competitiveness in securing global air cargo activity at a United States airport.

(2) **FOR ALL PROJECTS.**—In selecting a project for a grant under this section, the Secretary shall consider among other factors whether—

(A) funding has been provided for all other projects qualifying for funding during the fiscal year under this chapter that have attained a higher score under the numerical priority system employed by the Secretary in administering the fund; and

(B) the sponsor will be able to commence the work identified in the project application in the fiscal year in which the grant is made or within 6 months after the grant is made, whichever is later.

(e) **WAIVING PERCENTAGE REQUIREMENT.**—If the Secretary decides the Secretary cannot comply with the percentage requirement of subsection (c) of this section in a fiscal year because there are insufficient qualified grant applications to meet that percentage, the amount the Secretary determines will not be distributed as required by subsection (c) is available for obligation during the fiscal year without regard to the requirement.

(f) **CONSIDERATION OF DIVERSION OF REVENUES IN AWARDING DISCRETIONARY GRANTS.**—

(1) **GENERAL RULE.**—Subject to paragraph (2), in deciding whether or not to distribute funds to an airport from the discretionary funds established by subsection (a) of this section and section 47116 of this title, the Secretary shall consider as a factor militating against the distribution of such funds to the airport the fact that the airport is using revenues generated by the airport or by local taxes on aviation fuel for purposes other than capital or operating costs of the airport or the local airports system or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property.

(2) **REQUIRED FINDING.**—Paragraph (1) shall apply only when the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of such revenues in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(g) **MINIMUM AMOUNT TO BE CREDITED.**—

(1) **GENERAL RULE.**—In a fiscal year, there shall be credited to the fund, out of amounts made available under section 48103 of this title, an amount that is at least equal to the sum of—

(A) \$148,000,000; plus

(B) the total amount required from the fund to carry out in the fiscal year letters of intent issued before January 1, 1996, under section 47110(e) of this title or the Airport and Airway Improvement Act of 1982.